

RUTLAND RAILROAD COMPANY

— TO —

CENTRAL VERMONT RAILROAD COMPANY.

LEASE,

Dated December 31, 1890.

THIS AGREEMENT, made and concluded the 31st day of December, A. D. 1890, by and between the RUTLAND RAILROAD COMPANY, a corporation existing under the laws of the state of Vermont, party of the first part, and the CENTRAL VERMONT RAILROAD COMPANY, a corporation also existing under the laws of the state of Vermont, party of the second part,

WITNESSETH:

WHEREAS, the railroad of the first party connects with and is so situated in reference to the railroads operated by the second party that it can be most advantageously run as a part of the system of said second party; and

WHEREAS, the railroad and other property of the first party is now held and operated by the second party under a lease which expires by its terms on January 1st, 1891; said contract of lease being dated December 30th, 1870, and between the RUTLAND RAILROAD COMPANY, of the first part, and J. GREGORY SMITH, JOSEPH CLARK, WORTHINGTON C. SMITH and B. P. CHENEY, TRUSTEES AND MANAGERS, of the second part; and

WHEREAS, upon the expiration of said lease extensive improvements must be made to the roadway, stations and other real estate of the first party, and a large amount of rolling stock purchased in order to put the railroad and its equipment into first class running order; and

WHEREAS, the first party proposes to place upon its property a consolidated mortgage to the amount of three million five hundred thousand dollars for the purpose of funding the bonds secured by mortgages now resting upon its property and providing the means with which to defray the expenses of the above improvements; and

WHEREAS, it is provided by the eighth section of said lease that there shall, at its termination, be an appraisal of the difference in the "condition of efficiency" of the property at the beginning and end of said term and a payment by the one party to the other of the value of such difference, and each party claims that in virtue of the provisions of said section a large sum will be due to it:

NOW THEREFORE; the first party in consideration of one dollar to it paid by the second party, and of the covenants and conditions herein specified, has granted, demised and leased, and by these presents does grant, demise and lease unto the second party, its successors and assigns, the following described property, to wit:

Its railroad, known as the Rutland Railroad, extending in the state of Vermont from Burlington, its northern terminus, in the county of Chittenden, to Bellows Falls, its southern terminus, in the county of Windham; also the Addison Railroad, extending from Addison Junction, in the county of Essex, state of New York, to Leicester Junction, in the county of Addison, state of Vermont, where it connects with said Rutland Railroad; with all the privileges appertaining to either or both of said railroads, including the right of way, road-bed, superstructure, all lands and depot grounds, station houses, depots, side tracks, and all other structures and rights pertaining to or connected with said railroads, together with the repair shops, round houses, docks and water rights, wood lots and rights of way thereto, all its tools, machinery and rolling stock, in short all the property of the first party, both real and personal, except that specified in a schedule marked "A," and attached hereto, with the rents, revenue and income to be derived from any and every part thereof, and the rights, privileges and franchises of the party of the first part so far as may be necessary to enjoy the above grant.

To be by said second party, its successors and assigns, held and enjoyed for the term of nine hundred and ninety-nine years from January 1st, 1891, or during the life of the charter of the party of the first part, upon the following terms and conditions:

1. This lease shall be deemed to commence on the first day of January, A. D. 1891, and from and after that date the second party shall possess the said railroad and property under it, and shall operate the same as a railroad in such a manner as to reasonably accommodate the public traffic thereon; shall indemnify and save harmless the party of the first part from all liability of every sort and description to which it might be subjected by virtue of any omission or commission of the party of the second part in the use or operation of said property, and shall discharge all the duties and obligations resting upon the party of the first part to the public by virtue of its ownership of said property as a railroad corporation.

And the party of the second part may use the name of the party of the first part in maintaining or defending any action proper in the execution of this contract, and in acquiring any additional lands, rights of way, or other property necessary to the beneficial enjoyment of the premises hereby leased, having first in all cases suitably indemnified the first party. Any property so acquired shall be and become a part of the property covered hereby. The first party shall maintain the organization of itself and of the Addison Company, and shall take such corporate action as the second party may require to secure it in the enjoyment of its rights under this contract, any expense to be borne by the second party.

2. The party of the second part shall furnish the party of the first part, free of charge, suitable office room in the depot at Rutland at least as commodious and convenient as that now occupied by it under the existing lease. The party of the second part shall afford to the officers of the party of the first part the usual facilities extended to officers of connecting roads, shall furnish them, to the number of not more than twelve, free transportation over its entire system, and shall include in its annual exchange list the President, Treasurer and Clerk of the party of the first part.

3. All taxes, whether against the property, franchises, stock or obligations of the party of the first part, or of the Addison Railroad Company, or upon the business done or earnings accruing in the operation of the leased property, are to be paid by the party of the second part. And in case they are assessed against the party of the first part or said Addison Railroad Company, and that party or company is compelled to pay them in the first instance, the amount so paid shall be repaid to the first party by the party of the second part upon demand.

4. The party of the second part shall pay to the party of the first part, in the gold coin of the United States of the present standard of weight and fineness, an annual rental of three hundred and forty-five thousand dollars, and the interest hereinafter specified, said sums to be paid in equal monthly payments on the last day of each month, beginning January 31st, 1891.

5. The party of the second part may, upon assuming possession of the leased property, purchase from time to time such additional rolling stock and equipment as may be necessary to the efficient operation of the road. It shall also make such permanent acquisitions, constructions and improvements in and to the roadway, bridges and other real property hereby leased, as in the judgement of the second party are needful.

The party of the second part shall from time to time render unto the party of the first part a statement containing an inventory and description of the rolling stock and equipment so purchased and of the permanent acquisitions, improvements and constructions so made, and the value of the same, which shall be certified by the President of the second party to be correct. Upon receiving such statement the party of the first part shall forthwith verify the same, and if found correct the President of the first party shall so certify, and these statements when duly certified shall be conclusive as to the matters contained therein. If in any case the parties cannot agree thereto the difference shall finally be determined as follows:

A board consisting of two persons, one chosen by each of the parties, who shall choose a third if they do not agree, shall, in so far as the parties themselves cannot agree, inventory, describe and appraise the value of the rolling stock so purchased, and shall specify and appraise the value of the permanent acquisitions and constructions so made. Such board shall make its in-

ventory and appraisal from time to time at the request of either party, and shall certify the same to each party. This appraisal as certified by a majority of said board shall be conclusive, and upon the making of such certificate, or upon the certification by both parties of the statements herein provided for, the party of the second part shall be entitled to receive from the party of the first part within thirty days an amount equal to the value, as certified, of the rolling stock and equipment so purchased, and the acquisitions, improvements and constructions so made, not exceeding in the whole the sum of five hundred thousand dollars. But no part of said sum shall be payable until after July 1st, 1891. Only three hundred thousand dollars thereof shall be paid during the first year, and the whole amount shall be expended within three years from the commencement of this lease, except that the second party may at any time substitute iron for wooden bridges under this provision.

The party of the second part shall pay to the party of the first part in addition to the annual rental hereinbefore specified, interest upon all sums received by it under the provisions of this paragraph at the rate of five per cent. annually from the date they are received. This interest shall be paid from the date when it commences up to January 1st. following, upon said January first; and thereafter it shall be reckoned and paid as a part of the annual rental in monthly installments as hereinbefore set forth.

When in the making of such foregoing improvements and constructions old material is sold, the amount realized from such sales shall be deducted from the value of such improvements or constructions. But if any portion of such amount is actually expended in the improvement of the property as in this section specified, such portion shall not be so deducted, and the second party shall pay interest thereon at the rate of five per cent. per annum, as though it were so much advanced upon the same terms as, but in addition to the sums hereinbefore provided for.

6. All culverts, tracks, buildings, bridges, locomotives, cars and all rolling stock and other property, exclusive of road-bed, received by the party of the second part under this lease shall be forthwith inventoried, appraised and certified to each party by a board chosen as in the preceding paragraph. The property so appraised and certified, together with the rolling stock, equipment, acquisitions, constructions and permanent improvements appraised and paid for as in the preceding paragraph, shall be considered as that received and held by the second party under this lease, and the value thereof shall be conclusively determined by the appraisals as certified. Such inventory and appraisal shall not affect the rights of the second party under the existing lease.

The party of the second part shall at all times, by repairs, renewals, additions and substitutions, keep the said property, as a whole, good in kind and value, continuing the repair shops at Rutland, and maintaining all parts and parcels of the leased prop-

erty in first class condition for operation as a railroad, having reference to the amount and character of the traffic thereon, and shall return the same at the expiration of this term. The amount of the rolling stock embraced in this lease shall be kept good, and all rolling stock or other property held or acquired thereunder by addition, substitution or otherwise shall be plainly marked "RUTLAND DIVISION," and any rolling stock or personal property so marked by said second party shall be deemed to be a part of such leased property.

At the expiration of each and every five years the second party shall render to the first party an inventory of the personal property held by it under this lease, and shall also furnish a statement of such permanent improvements and additions made within the five years as would be subject to a reappraisal. In case it becomes material at any future time to determine the value of this property, or any portion thereof, in reference to the provisions of this lease, a similar board of appraisers shall be created in the same manner, who shall make a like inventory, appraisal and certificate. Their appraisal shall be upon a gold basis of the present standard of weight and fineness and shall be conclusive. In case either party declines to appoint such appraiser application may be made to the Court of Chancery for the county of Rutland, or to any court exercising the jurisdiction now exercised by that court, which shall so appoint with the same effect as if the appointment were made by the party itself.

7. The second party shall keep the wooden bridges and buildings fully insured in reliable companies; and shall apply the proceeds of any such insurance in replacing the property destroyed, or in substitution of other property of equal value.

8. The party of the first part shall protect the party of the second part in the quiet enjoyment of the property hereby leased, and defend its title under this lease against all lawful claims whatsoever. The second party shall maintain the boundaries of the property, and in case it neglects to prosecute any encroachment thereon, shall suffer the party of the first part to sustain an action in its name.

9. For the purpose of securing the payment of the rent and interest hereinbefore provided for, the party of the second part agrees to execute an irrevocable order in favor of the party of the first part upon the FITCHBURG RAILROAD COMPANY, and procure the acceptance of the same by that company, providing for the payment to the party of the first part by it of the sum of twenty thousand dollars monthly out of the traffic balances due from it to the said party of the second part, which shall be held by the party of the first part as a continuing security; and the said FITCHBURG RAILROAD COMPANY is hereby authorized and directed to pay to the said party of the first part the aforesaid sum of twenty thousand dollars monthly. The second party also agrees that the gross receipts from all the stations upon the line of the railroads hereby leased shall be paid directly into the Clement National Bank of Rutland, which is hereby authorized to hold the same as security to an amount equal to any sums due

and unpaid under the provisions of this lease, whether of rent or interest, and of all sums to become due during the current month, deducting therefrom the amount of the aforesaid order so long as the same is paid from month to month. If all sums due under this lease have been fully paid at the end of each month, any sums theretofore received and held as security by said bank shall be thereby released.

If the said Clement National Bank, or any successor, declines to receive and hold the receipts as above, or is disqualified for any sufficient reason from so doing, the parties may agree upon some other suitable depository; and if they cannot agree the Court of Chancery for the county of Rutland, or any other court of general jurisdiction for that county, may, upon the application of either party, appoint, first determining whether any new appointment is necessary. The depository so agreed upon or appointed shall assume in all respects the functions of the said bank in this behalf. And if at any time the said FITCHBURG RAILROAD COMPANY neglects to pay the aforesaid order according to its terms, the party of the second part shall furnish some other suitable security in lieu thereof.

10. If the party of the second part neglects, for the space of thirty days from the time they fall due, to pay unto the party of the first part any of the sums herein provided for, or neglects to provide the security contemplated by the Fitchburg order as herein specified, or some equivalent security, or refuses to pay the station gross receipts to whomever may be for the time the depository to whom they should be paid by the terms of this lease, or to comply with any of the other covenants and conditions hereby expressed or intended, for the space of thirty days after being thereto requested in writing, it shall be lawful for the first party to re-enter upon the premises and repossess itself of the property hereby leased, together with all the renewals thereof and all additions thereto and substitutions therefor, and the party of the second part further consents that upon the accruing of a right of re-entry as above the Court of Chancery, or whatever other court exercises the power of injunction, may assume jurisdiction and enjoin the second party from further interfering with said leased property. Said jurisdiction to be exercised in accordance with the rules and practice of said Court of Chancery.

11. It is further understood and agreed that all questions of difference between the parties arising under the eighth section before referred to, upon the expiration of the existing lease shall be suspended upon the execution of this lease until the determination thereof if it occurs within ten years; and that if the second party continues to hold the property for ten years in accordance with the terms hereof, all claims in favor of either party under said eighth section shall be treated as fully satisfied and discharged.

12. The aforesaid consolidated mortgage for three million five hundred thousand dollars and all renewals thereof shall have priority over this lease in all respects as if the same had been executed and recorded and the bonds secured thereby issued before the execution of these presents.

13. Both parties shall execute any and all other deeds, writings, covenants or assurances necessary to the carrying out of the true intent of this contract.

14. It is understood that all the covenants, conditions and agreements herein contained are binding upon the successors and assigns of the respective parties as though so specifically expressed in all cases; but the party of the second part shall not assign this lease or sub-let the property without the consent of the first party, unless the railroad properties other than the Rutland Railroad, now operated by the second party, or substantially all of them, should be consolidated in one company, in which case the second party may, as a matter of right, assign this lease to such company, upon condition that in virtue of such assignment and upon the acceptance thereof, all the covenants and conditions herein expressed shall become binding upon such assignee. Any attempted assignment or sub-lease other than as herein provided shall operate as a forfeiture of this lease and of all privileges hereunder.

In testimony whereof the RUTLAND RAILROAD COMPANY has caused this instrument to be signed by its President, Percival W. Clement, thereto duly authorized, who has hereunto set his hand and affixed the seal of said Corporation; and the CENTRAL VERMONT RAILROAD COMPANY by its President, J. Gregory Smith, thereto duly authorized, who has hereunto set his hand and affixed the seal of the Central Vermont Railroad Company, all upon the day and year first above written.

RUTLAND RAILROAD COMPANY,

By PERCIVAL W. CLEMENT,
President.

Seal of Rutland
Railroad Company.

CENTRAL VERMONT RAILROAD COMPANY,

By J. GREGORY SMITH,
President.

Seal of the Central
Vermont Railroad Company.

In presence of

B. F. FIFIELD,

C. A. PROUTY.

STATE OF VERMONT, }
CHITTENDEN COUNTY, } ss.

At Burlington, this 31st day of December, 1890, personally appeared the above named Percival W. Clement, and acknowledged the foregoing instrument to be the free act and deed of both himself and the said Rutland Railroad Company.

Before me,

C. A. PROUTY,

Master in Chancery.

STATE OF VERMONT, }
CHITTENDEN COUNTY, } ss.

At Burlington, this 31st day of December, 1890, personally appeared the above named J. Gregory Smith, and acknowledged the foregoing instrument to be the free act and deed of both himself and the Central Vermont Railroad Company.

Before me,

C. A. PROUTY,

Master in Chancery.

SCHEDULE "A."

At Bellows Falls—Dwelling house and lot formerly occupied by J. Bowtell. Store and other buildings occupied by J. Wilson & Co.

At Bartonsville—Farm bought of Patrick Mehan, by deed dated September 6th, 1870.

At Cavendish—Lots bought of Redfield Proctor and wife.

At Rutland—Land north of Freight Street, so-called, formerly occupied by Mansfield & Stimson for a foundry and machine shop.

Building and land formerly occupied by Samuel D. Jenness.

Land upon which the engine house of "Washington, No. 2" [Fire Company], and office occupied by Dr. Goldsmith were formerly situated, and now occupied by the Vermont Beef Company, and south of said Vermont Beef Company's building to land of the Bennington & Rutland Railroad.

At Burlington—Stone store and Lake House property east of railroad track.

Land upon which is situated the storehouse of Van Sicklen & Spaulding.

Land and rights conveyed to George W. Beckwith for the purpose of building a wharf, under contract dated September 15, 1868, and water lots adjoining said wharf, the title of which is in litigation in Chittenden County, said property being now occupied by Elias Lyman & Co. and H. R. Conger.

The water front at Burlington west of the track and south of the Beckwith wharf, including the property bought of P. W. Clement by deed dated May 4, 1888, is reserved for the use of the party of the first part, with proper facilities for passing over the tracks of the Rutland Railroad to and from said water front.

Land formerly leased to S. K. Wells and now leased to Lawrence Bartley.

Land formerly leased to George F. Hilton and William Miller.

Land bought of Evelyn Pierpoint by deed dated May 28 1865.

All stocks and bonds owned by the party of the first part.

The property in and about the offices of the party of the first part, and all the property used in the maintaining of its organization.

All debts due, rights of recovery and choses in action of every nature.

Rails at Brandon, laid in side track to Corona Marble Mill.